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#### COVER NOTE

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	27 April 2020
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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No. Cion doc.:	C(2020) 2557 final
Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 27.4.2020 amending Regulation (EC) No 785/2004 of the European Parliament and of the Council on insurance requirements for air carriers and aircraft operators

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Delegations will find attached document C(2020) 2557 final.

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Encl.: C(2020) 2557 final



Brussels, 27.4.2020  
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**COMMISSION DELEGATED REGULATION (EU) .../...**

**of 27.4.2020**

**amending Regulation (EC) No 785/2004 of the European Parliament and of the Council  
on insurance requirements for air carriers and aircraft operators**

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE DELEGATED ACT**

Article 24 of the Convention for the Unification of Certain Rules for International carriage by Air (Montreal Convention of 1999) obliges the International Civil Aviation Organization (ICAO) to revise the limits of liability of the Convention by reference to an inflation factor, which corresponds to the accumulated rate of inflation since the previous revision. The latest revision by ICAO is with effective date of 28 December 2019.

All EU Member States and the European Union are parties to the Montreal Convention.

The minimum insurance cover under Regulation (EC) No. 785/2004 in respect of liability for baggage and cargo in the EU is now below the new minimum liability limits of the Montreal Convention. This needs an amendment of Article 6(2) and (3) of Regulation (EC) No. 785/2004 with regard to minimum insurance cover in respect of liability of baggage (from the current 1,131SDR to 1,288SDR) and in respect of liability of cargo (from the current 19SDR/kg to 22SDR/kg) rendering the Regulation in line with the obligations under Montreal Convention.

### **2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT**

In accordance with Article 128(4) of Regulation (EU) 2018/1139, before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. The draft of the delegated act will be presented at the meeting of the Commission experts group including representatives from the Member States in March 2020.

### **3. LEGAL ELEMENTS OF THE DELEGATED ACT**

The Commission is empowered to adopt delegated acts in accordance with Article 128 of Regulation (EU) 2018/1139.

COMMISSION DELEGATED REGULATION (EU) .../...

of 27.4.2020

**amending Regulation (EC) No 785/2004 of the European Parliament and of the Council  
on insurance requirements for air carriers and aircraft operators**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 785/2004 of the European Parliament and of the Council of 21 April 2004 on insurance requirements for air carriers and aircraft operators <sup>(1)</sup>, and in particular Article 6(5) thereof,

Whereas:

- (1) By Council Decision 2001/539/EC <sup>(2)</sup> the Community concluded the Convention for the Unification of Certain Rules for International Carriage by Air, agreed at Montreal on 28 May 1999 (Montreal Convention), which lays down rules on liability in respect of the international carriage by air of persons, baggage and cargo.
- (2) Regulation (EC) No 785/2004 established minimum insurance requirements in respect of liability for passengers, baggage and cargo at a level to ensure that air carriers are adequately insured to cover their liability under the Montreal Convention.
- (3) The limits of liability of air carriers under the Montreal Convention have recently been reviewed by the International Civil Aviation Organization (ICAO) by reference to an inflation factor which corresponds to the accumulated rate of inflation since the date of entry into force of the Montreal Convention.
- (4) The ICAO has determined that the inflation factor since 30 December 2009, the date of entry into force of the previous revised limits of the Montreal Convention, has exceeded 10 per cent, the threshold for triggering an adjustment of the limits of liability. Therefore, the limits of liability have been revised accordingly.
- (5) The minimum insurance requirements in respect of liability for passengers, baggage and cargo, established by Regulation (EC) No 785/2004, should be timely adjusted to the revised limits of liability under the Montreal Convention which became effective on 28 December 2019.
- (6) For liability in respect of passengers, the minimum insurance requirements of Regulation (EC) No 785/2004 have been set at a level significantly exceeding the revised limits of liability under the Montreal Convention.
- (7) In respect of liability for baggage and cargo, the minimum insurance requirements of Regulation (EC) No 785/2004 should be increased to the level of the revised limits of liability under the Montreal Convention.
- (8) Regulation (EC) No 785/2004 should therefore be amended accordingly,

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<sup>1</sup> OJ L 138, 30.4.2004, p. 1.

<sup>2</sup> OJ L 194, 18.7.2001, p. 38.

HAS ADOPTED THIS REGULATION:

*Article 1*

In Article 6 of Regulation (EC) No 785/2004, paragraphs (2) and (3) are replaced by the following:

- ‘2. For liability in respect of baggage, the minimum insurance cover shall be 1 288 SDRs per passenger in commercial operations.
3. For liability in respect of cargo, the minimum insurance cover shall be 22 SDRs per kilogram in commercial operations.’

*Article 2*

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 27.4.2020

*For the Commission*  
*The President*  
*Ursula VON DER LEYEN*